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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

LD, et al.,

Plaintiffs,

v.

United Behavioral Health, Inc., et al.,

Defendants.

Case No.: 4:20-cv-02254-YGR

**Declaration of Nicole Wemhoff in Support
of Plaintiffs' Opposition to Defendants'
Motion Re: Disputed Sealing Requests**

1 Pursuant to Civil Local Rule 79-5, I, Nicole E. Wemhoff, declare as follows:

2 1. I am an attorney at Arnall Golden Gregory LLP, which is counsel of record for
3 Plaintiffs LD, *et al.*, in the above captioned case. I submit this Declaration in support of the Plaintiffs'
4 Opposition to Defendants' Sealing Requests. I have personal knowledge of the facts set forth in this
5 Declaration, and if called as witness, could and would testify competently to such facts under oath:

6 2. Following the Court's decision to grant in part and deny in part, without prejudice,
7 Defendants' Motion to Seal on March 31, 2023, the parties have engaged in numerous meet and
8 confers and email exchanges regarding the sealing of documents in order to streamline this process
9 and ensure that confidential information was appropriately sealed.

10 3. While United and MultiPlan (collectively, "Defendants") agreed to narrow some of
11 their redactions, such as generic references to shared savings fees, the existence of the shared savings
12 program, and the APC that has been used to crosswalk the claims at issue in this case, they continue
13 to maintain that large portions of the record are confidential and must be kept under seal.

14 4. Defendants have stated, among other reasons, that the materials in dispute are
15 confidential because:

- 16 a. The document(s) contains nonpublic, confidential and propriety information of
17 MultiPlan, the disclosure of which would adversely affect its business;
- 18 b. Internal document(s) that contains commercially sensitive, proprietary and non-
19 public information that would harm United's business advantage, if publicly
20 disclosed (*e.g.*, the information concerns plan sponsors that have an ongoing
21 business relationship with United);
- 22 c. Contains highly confidential, proprietary, and commercially sensitive
23 information involving MultiPlan's proprietary Viant OPR product design and
24 methodology, the public disclosure of which would cause immediate and
25

1 irreparable harm to MultiPlan’s business; describes and explains in detail
2 MultiPlan’s proprietary Viant OPR product design and methodology; contains
3 specific, step-by-step processes for calculating claims re-imbursement
4 recommendations using MultiPlan’s proprietary Viant OPR product and
5 methodology, as well as an explanation of how the methodology was developed
6 and how it works, all of which could be used by Multi-Plan’s competitors to
7 “reverse engineer” its proprietary Viant OPR product and methodology; and
8

- 9 d. Reflects proprietary internal United process logic and processes that, if publicly
10 disclosed, would provide United’s competitors with insights into United’s
11 proprietary processes as they relate to out-of-network reimbursement that they
12 would not otherwise have access to, thereby putting United at a competitive
13 disadvantage.
14

15 5. Documents containing substantially similar, and in some cases *identical*, materials
16 that Defendants seek to seal in this case, have been unsealed due to heightened public interest or
17 filed publicly since the first motion for class certification was filed in 2022 and the court granted in
18 part and denied in part, without prejudice, Defendants Motion to Seal on March 31, 2023.

19 6. Shortly after the Motion to Seal was granted in part and denied in part, without
20 prejudice, the New York Times expressed interest in this case. A true and correct copy of a Letter
21 from Chris Hamby, Reporter, Investigations, The New York Times, dated Aug. 4, 2023 is attached
22 at **Exhibit 1**. Mr. Hamby has since written numerous articles regarding MultiPlan’s relationship
23 with United and other payors and shared savings fees.
24

25 7. Before the parties began to brief the renewed motion for class certification, Judge
26 Carter, in the *TML Recovery v. Cigna Corporation et al*, Case 8:20-cv-00269-DOC-JDE, issued a
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28

1 ruling on the sealing of documents, which dealt with documents similar, and in some cases identical,
2 to those at issue in this case. *See* attached Order at **Exhibit 2** (*TML Recovery*, Dkt. 463).

3 8. Some examples of documents that have been made public¹ include:

- 4 a. Multiplan's Viant Facility U&C Review Outpatient Review (OPR Module),
5 attached hereto as **Exhibit 3** (*TML Recovery*, Dkt. 464-2), which Defendants seek
6 to seal in its entirety here at Pls. Ex. 43. (Dkt. 396-45, 397-42)
7
8 b. Multiplan witness Sean Crandell Declaration about Multiplan Viant processes,
9 included at **Exhibit 3**, which Defendants filed similar declaration in this case at
10 Dkt. 409.
11
12 c. True and correct copies of MultiPlan Global Agreements, included at **Exhibit 4**
13 (*TML Recovery*, Dkts. 459-25, 459-26), which contains information regarding
14 provider rates paid by MultiPlan. Similar rates sought to be sealed discussed at
15 Pls. Ex. 8, deposition of Summit Estate, by its designee Joan Borsten at 127:4-9;
16 153:22-156:21; 200:19-201:3; 287:1-7; 302:3; 303:23-304:17; 305:1-3; 306:22-
17 23; 364:1. (Dkt. 396-10, 397-9).
18
19 d. A true and correct copy of MultiPlan's Master Services Agreement No.
20 MSA107409-MultiPlan-2014, (*TML Recovery*, Dkt. 461-37) containing
21 descriptions of MultiPlan's pricing, service offerings, and fees. Attached as
22 **Exhibit 5**.
23
24 e. Viant "offers" to providers. Sample attached as **Exhibit 6** (*TML Recovery*, Dkt.
25 459-22). *Compare* Defs. Ex 72 Patient Advocate Department letter (Dkts. 407-
26 3, 415-13)
27
28

¹

1 f. Deposition Transcripts of MultiPlan and Payor witnesses generally discussing
2 claims history, claims processing, internal procedures, and appeals process
3 Attached as Composite **Exhibit 7**.

4 i. A true and correct copy of a portion of MultiPlan's witness, Kathy
5 Praxmarer's March 14, 2023, deposition transcript (*TML Recovery*, Dkt.
6 459-11) discussing claims history.

7 ii. A true and correct copy of a portion of MultiPlan's witness, Sean
8 Crandell's March 22, 2023, deposition transcript (*TML Recovery*, Dkt.
9 461-31) discussing Cigna's target price for claims.

10 iii. A true and correct copy of a portion of Cigna's witness, Mike Callahan's
11 March 1, 2023, deposition transcript (*TML Recovery*, Dkts.461-42)
12 discussing the lack of information on Cigna's appeals process.

13 g. Administrative Services Agreements, including all cost containment/shared
14 savings fees. Sample attached at **Exhibit 8**. *Compare* Pls. Ex. 25, Composite of
15 Administrative Services Agreements, (*TML Recovery*, Dkts. 474-1, 474-2, 474-
16 3, 474-4, 474-5). Similar fees and terms are referenced throughout the Renewed
17 Motion for Class Certification, Defendants' Brief in Opposition to Renewed
18 Class Certification,, Ohsfeldt Expert Report, and the RPC Expert Report and
19 Rebuttal Report which Defendants seek to maintain sealing. *See, e.g.*, Dkts. 396,
20 397-1, Pls. Ex. 1, (Dkts. 396-3, 397-2), Pls.' Ex. 3 (Dkts. 396-5, 397-4), Pls. Ex.
21 65 (Dkts. 426-2, 427-3).

22 h. True and correct copies of email chains between payor executives regarding
23 underlying methodology and pricing of substance use disorder claims. *TML*
24 *Recovery*, Dkts 460-4, 460-6, 460-12). Attached as **Exhibit 9**. *Compare* Pls. Ex.
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36, Lopez Emails (Dkts. 396-38, 397-35), Pls. Ex. 46 Beckstead 2018 Mapping Email (Dkts. 396-47, 397-45), Pls. Ex. 47 Crandell Schill Emails (Dkts. 396-48, 397-46), among others.

9. Client Names and other categories of PHI/PII should retain strict confidentiality protections. Plaintiffs proposed a number of redactions to documents which contained PHI. Defendants refused to review the redactions, despite having a week to do so. Many of the documents that Defendants objected to the proposed sealing measures were previously redacted and required no further edits.

I declare under the penalty of perjury under the laws of the District of Columbia that the foregoing is true and correct, and I signed this declaration on August 16, 2024 in Washington, D.C.

/s/ Nicole E. Wemhoff
Nicole E. Wemhoff, Esq.